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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,942	02/28/2004	Steven Rosati		9174

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Lewis M. Brande  
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EXAMINER
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SOOHOO, TONY GLEN

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/788,942

Applicant(s)

ROSATI, STEVEN

Examiner

Tony G. Soohoo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2-28-04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, are rejected under 35 U.S.C. 102(b) as being anticipated by DES. 1974788 to Larson.

The Larson reference teaches a rigid cylindrical shaft as seen by the cross section as seen in figures 2 and 3, a lower mixing blade, with left and right sides and smoothly connected to a bottom end, which is flat. Furthermore there is a handle end portion as seen in the top of figure 3 with a loop member to provide for the hanging of the device.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over DES. 1974788 to Larson.

Larson discloses all of the recited subject matter as defined within the scope of the claims with the exception of shaft and mixing blade being made of metal. The use of

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stainless steel is old and well known in the use of stirring and scraping devices in the food industry for properties of strength, and durability and ease of cleaning.

Accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the material in which the blade and shaft is made to the material of stainless steel in order to produce a more stronger, durable and easily cleaned device. It is noted that it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

5. Claim 4 and 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over DES. 1974788 to Larson in view of Tupper 2900656.

The Larson reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of the bottom end of the mixing blade being curved.

The reference to Tupper teaches a cleaning, stirring and mixing element with a handle 10, a blade 11, left and right sides 19, 18, a bottom 22, 21, 20 which has a curve 20 which may conform with the bottom 38 of a container 37, 40, see figures 2, 10, and column 3, lines 70-74, and column 4, lines 7-10.

Tupper also teaches that one may provide a having a central flat portion 12 whereby a hole 16 is provided in the handle to hang the device, figure 3.

In view of the teaching by Tupper that a scraper, mixer may have a curved bottom to conform to the curvature of what is being scraped, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the bottom shape of the

blade of Larson with a curve so that it may better conform the container in which it is used in combination when scraping or mixing the materials.

Furthermore, with regards to claims 6-7, in view of the teaching by Tupper that a handle may be formed with a central flat portion where a hole is formed in the distal end of the flat portion provides a means to hang the device, it is deemed that it would have been further obvious to one of ordinary skill in the art to modify the handle portion end of the Larson device with a handle having a flat central portion and hole in the distal end so as to better hang the device.

6. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over DES. 1974788 to Larson in view of Johnstone et al 2727777.

The Larson reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of the handle being elliptically shaped (claim 5) and having a central flat portion with a hole for hanging the implement (claims 6-7).

The Johnstone (et al) reference discloses that a handle 6 may be formed with an elliptical cross section 6 and a central flat portion 7 at the end of the handle whereby a hole 8 is formed in the distal end of the handle as a means to hang the device, column 2, lines 65-71.

In view of the teaching of Johnstone the handle configuration as discussed above, it is deemed that it would have been further obvious to one of ordinary skill in the art to modify the handle portion end of the Larson device with an elliptical cross section handle having a flat central portion and hole in the distal end so as to better hang the device.

***Conclusion***

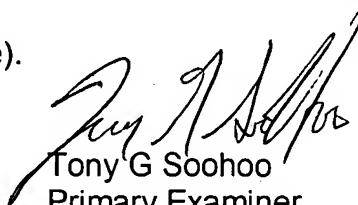
7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hudson 5881425 and Mohrhauser et al Des.407599 shows a flattened elliptical cross section handle. The following show handles upon a cylindrical shaft with a tool member at the other end: Ferris Des 148777, Henschell 2264374, Mahoney Des 282518, and Kuever 2747911. Hyde 435500 and design patent D303478 disclose a tool with a curve portion. The following disclose tools which may interact with a container: Jorgensen des 735234, Hogue des 254588, Cook Des 293072, Agustino et al des 321303, and Agustino Des 289962, Harp 2670939, Carter 277.7676, Siegel et al US 2004/0231087.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7:00 AM - 5:00 PM, Tues. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tony G Soohoo  
Primary Examiner  
Art Unit 1723

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